

February 22, 2011

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Re: Debit Card Interchange Fees and Routing, Docket No. R-1404, RIN  
No. 7100-AD63

Dear Ms. Johnson:

This letter is in response to the request of the Board of Governors of the Federal Reserve System (the "Board") for public comment on the Debit Card Interchange Fees and Routing Notice of Proposed Rulemaking ("Reg. II").

By way of background, I am an attorney whose practice includes payments, and I work with a number of clients, including, but not limited to, governmental benefit card issuers and program managers. I submit this letter on my own behalf; my statements are not made on behalf of my firm. Initially, I want to recognize and extend my appreciation for the thousands of hours the Board and its staff spent crafting Reg. II. I know the staff's dedication and hard work on this very important issue have been extraordinary.

I respectfully request that the Board consider the following when preparing the final rule:

- I. The Exemption for Government Payments Should Apply to All Types of Payments Made by or on Behalf of a Government Agency, Whether Recurrent or One-Time

Section 235.5(b) of Reg. II provides an exemption for "government-administered" programs. Specifically, the Board provides that an interchange fee charged or received with respect to an electronic debit transaction made using a debit or general use prepaid card that has been provided to a person pursuant to a Federal, State, or local government-administered payment program is generally exempt from the

interchange fee restrictions. It appears the exemption will be lost if the cardholder may use the debit or general use prepaid card for any purpose other than to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program. Given the importance of enabling government agencies to make payments via prepaid cards, and the savings and convenience to the agencies and the recipients, I ask the Board to reconsider the position that such cards may only engage in such limited activity, and instead allow such exempt government-administered cards a greater range of activities, including those commonly offered by open loop general purpose prepaid products.

The Board proposes to consider a program as "government-administered" regardless of whether a Federal, State, or local government agency operates the program or outsources the administration of the card program in full or in part to a third-party service that acts on behalf of the government agency. Given that many use third-party service providers, I strongly concur with the Board's proposal.

The Board notes that a program may be "government-administered" even if a Federal, State, or local government agency is not the source of funds for the program it administers. For example, the Board recognizes that for child support programs, a Federal, State, or local government is not the source of funds, but such programs are nevertheless "administered" by state governments. The Board concludes that cards distributed pursuant to such programs would fall within the exemption. Again, I believe this position is extremely important to incorporate into the final rule, given the source and flow of funds for many programs do not originate from a governmental agency.

It is important the Board clearly state the exemption will apply to any type of government-administered program, regardless of its purpose, except where the payment or program is otherwise exempt by applicable law. For example, the exemption should apply to recurrent as well as one-time payments by government agencies, such as unemployment, jury service, tax refunds, prisoner stipends, etc. Accordingly, I respectfully request the Board state in the final rules that the exemption applies to all types of government payments made through a government agency, by a government agency (directly or indirectly), on behalf of a governmental agency, or where the government agency makes the payment or handles the payment on behalf of another.

The Board should also apply the exemption to payroll or other types of compensation paid by a government agency. Many government agencies are looking to offer payroll cards to their employees and independent contractors due to the convenience and savings available to both the agency and the employee or independent contractor. The economies of such programs may be materially and adversely impacted if

interchange rate limitations apply to such payments. Accordingly, the Board should clearly state that payroll and compensation arrangements done by or on behalf of a government agency should also be exempt from the interchange fee limitations provided in Reg. II.

## II. Payroll Cards Should Qualify as General Purpose Reloadable

Reg. II provides an exemption for an interchange transaction fee charged or received with respect to an electronic debit transaction for a plastic or other payment card or device that is “(1) linked to funds, monetary value, or assets purchased or loaded on a payment basis; (2) not issued or approved for use to access or debit any account held by or for the benefit of the cardholder other than a subaccount or other method of recording or tracking funds purchased or loaded on a prepaid basis; (3) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines; (4) used to transfer or debit funds, monetary value, or other assets; and (5) reloadable and not marketed or labeled as a gift card or a gift certificate.” The Board goes on to state that an exempt card may not be issued or approved for use to access or debit an account held by or for the benefit of the cardholder (other than a subaccount or other method of recording or tracking funds purchased or loaded on the card on a prepaid basis). “Therefore, services that structure prepaid card programs such that the funds underlying each card are attributed to separate accounts do not qualify for the exemption based on the conditions set forth under the statute.” I respectfully request the Board to clarify that as long as a prepaid payroll program is constructed so that the funds are part of an omnibus account, payroll accounts offered under such a program are deemed to qualify under the reloadable prepaid card exemption contained in Section 235.5(c) of Reg. II.

## III. Routing

Section 235.7 of Reg. II addresses proposed prohibitions on network exclusivity. The Board notes it is required to issue rules “prohibiting an issuer or payment card network from directly or indirectly restricting through any agent, processor or licensed member of a payment card network, the number of payment card networks on which an electronic debit transaction may be processed to fewer than two unaffiliated payment card networks.” The Board proposes two alternatives: A and B. Of the two alternatives, alternative A is preferred — the Board should not require issuers to offer multiple unaffiliated signature and multiple unaffiliated PIN debit card network choices on each card due to the cost and difficulty of compliance. The Board should consider whether even less burdensome requirements than those imposed by alternative A should be adopted.

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I greatly appreciate the Board's willingness to consider these comments.

Sincerely,

A handwritten signature in cursive script, appearing to read "Deborah Thoren-Peden".

Deborah Thoren-Peden